

Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL–CIO (United States Postal Service) and Li Eagle Ransom

American Postal Workers Union, AFL–CIO (United States Postal Service) and Li Eagle Ransom.
Cases 19–CB–9568 and 19–CB–9593

June 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On January 18, 2008, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondents filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondents filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions¹ and to adopt the recommended Order.²

The issue in this case is whether the Respondent Unions violated Section 8(b)(1)(A) of the Act by distributing certain settlement moneys only to union members. The judge found the alleged violation. As set forth below, we affirm.

In 2003, the United States Postal Service (Employer) and the American Postal Workers Union, AFL–CIO (APWU) entered into an agreement to settle grievances, challenging the Respondent’s assignment of nonunit casual employees to perform bargaining unit work. The agreement included a provision that funds intended for former employees who could not be located would “be remitted to the local unions.” However, when Puget Sound Area Local #298 (Local 298) requested the remit-

tance of funds in accordance with this provision, the Employer offered to pay a “greater total amount” if Local 298 would “waive its right to receive payment directly and instead designate employees for direct payment.” The parties subsequently executed a new settlement agreement in 2006, which stated that it was the “final and complete resolution of any and all issues” concerning the 2003 agreement, and which provided that “[c]urrent clerk craft employees,” to be identified by APWU Business Agent Marty Barron, would receive a lump-sum payment. The Respondents decided that the lump sum would be divided equally among unit employees who were also members of Local 298. Nonmember unit employees were excluded from the distribution.

The judge found that the Respondents violated Section 8(b)(1)(A) by discriminating against nonmember bargaining unit employees in distributing the settlement moneys. Excepting, the Respondents assert that Local 298 had a contractual right under the 2003 settlement agreement to the funds distributed under the 2006 settlement agreement and thus could lawfully assign its rights to those funds as it chose. This argument ignores, however, that the 2006 agreement modified the relevant provision of the 2003 agreement by providing for remittance of the settlement proceeds to the “[c]urrent clerk craft employees” rather than to “the local unions.”

Even assuming that Local 298 retained, under the 2006 agreement, a contractual right to the settlement moneys that it was otherwise free to assign, it was not free to do so on the basis of union membership. “It is well settled that Section 8(b)(1)(A) of the Act prohibits unions, when acting in a statutory representative capacity, from taking action against any employee upon consideration or upon the basis of classifications that are irrelevant, invidious, or unfair.” See *Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982, 982–983 (1978). Consistent with this principle, the Board has found that a union violates Section 8(b)(1)(A) when it discriminates against unit employees solely on the basis of their nonmembership status as such discrimination necessarily coerces employees in the exercise of their Section 7 rights to join or refrain from joining a labor organization. See, e.g., *Stagehands Referral Service*, 347 NLRB 1167, 1169 (2006) (finding that union violated Sec. 8(b)(1)(A) by refusing to refer hiring hall registrant based on his nonmembership status); *Postal Service*, 345 NLRB 1203 (2005) (finding, inter alia, that union violated Section 8(b)(1)(A) by conditioning training academy instructorships on union membership), enfd. 254 Fed.Appx. 582 (9th Cir. 2007). In light of this precedent, we agree with the judge that Local 298 violated Section 8(b)(1)(A) by discriminating against nonmember unit employees in

¹ In concluding that the Respondents violated Sec. 8(b)(1)(A), the judge relied in part on *Postal Workers Local 735 (Postal Service)*, 342 NLRB 545 (2004). However, there were no exceptions in that case to the judge’s unfair labor practice findings, so that decision is not relevantly precedential. We also find it unnecessary to rely on *Red Bank Local Postal Workers*, 344 NLRB No. 89 (2005) (not included in Board volumes), also cited by the judge. Instead, in adopting the judge’s finding of a violation, we rely on the precedent cited herein.

² We shall substitute a new notice to conform to the Board’s standard remedial language and to our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Section 3(b) of the Act.

distributing the settlement moneys from the 2006 agreement. Cf. *District 65, Distributive Workers of America (Blume Associates, Inc.)*, 214 NLRB 1059 (1974) (union violated Sec. 8(b)(1)(A) by discriminatorily distributing settlement funds only to those employees who picketed and supported the union).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL-CIO, and American Postal Workers Union, AFL-CIO, Tacoma, Washington, their officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to include nonmembers of our Unions among unit employees who share in the distribution of a 2006 lump-sum payment made by the United States Postal Service to employees identified by us, in settlement of a class action grievance.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Li Eagle Ransom and other injured nonmembers whole, with interest, for any loss of earnings and other benefits suffered as a result of the our failure and refusal to include nonmembers among unit employees who share in the distribution of a lump-sum payment made by the United States Postal Service to

employees identified by us, in settlement of a class action grievance.

PUGET SOUND AREA LOCAL #298, AFFILIATED WITH THE AMERICAN POSTAL WORKERS UNION, AFL-CIO AND AMERICAN POSTAL WORKERS UNION, AFL-CIO

Ryan E. Connolly, Esq. and Daniel Apoloni, Esq., for the General Counsel.

Anton G. Hajjar, Esq. (O'Donnell, Schwartz & Anderson), of Washington, D.C., for the Respondents.

Li Eagle Ransom, an Individual, of Tacoma, Washington, Pro se.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. This case was submitted to me based on a stipulation of facts dated September 17, 2007. On February 13, 2007, Li Eagle Ransom (Ransom) filed the charge in Case 19-CB-9568 alleging that Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL-CIO (Respondent Local), committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). On April 5, 2007, Ransom filed the charge in Case 19-CB-9593 alleging that American Postal Workers Union, AFL-CIO (Respondent National) committed certain violations of Section 8(b)(1)(A) of the Act. On April 26, 2007, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent Local, alleging that Respondent violated Section 8(b)(1)(A) of the Act. On July 31, the Regional Director issued a consolidated complaint and notice of hearing in Cases 19-CB-9568 and 19-CB-9593 alleging that both Respondents violated Section 8(b)(1)(A) of the Act. Respondents filed timely answers to the complaint denying all wrongdoing.

By stipulation, the parties have waived their right to a hearing before an administrative law judge. All parties have been given the opportunity to file briefs. Upon the stipulated record, including all exhibits thereto, and having considered the briefs filed by the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

The United States Postal Service (Employer) provides postal service for the United States of America and operates various facilities in the United States in performance of that function, including facilities in Tacoma, Washington.

The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209.

Respondents are both and have been, at all times material, labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Stipulated Facts

At all material times, by virtue of Section 9(a) of the Act, Respondents have been the exclusive collective-bargaining representative covering employees in an appropriate unit, including FSM clerks (unit) in and around Tacoma, Washington. At all material times, Respondents and the Employer have maintained and enforced a collective-bargaining agreement covering conditions of employment of the unit and containing, among other provisions, a grievance and arbitration procedure.

In about June 2003, the Employer and Respondent National entered into a settlement agreement resolving certain outstanding grievances involving the Postal Service's assignment of nonunit casual employees in lieu of regular work force employees. Respondent National designated Respondent Local to determine the distribution of a portion of the funds provided by the settlement.

Respondent Local determined payments would be based on how much a unit employee worked during the time the grievances had been pending. Respondent Local made this determination without regard to union membership. Respondent Local performed this calculation and provided the information to Martin Barron, national business agent for Respondent National. Barron informed the Employer of the amounts each eligible unit employee was due. The Employer issued payment to the unit employees consistent with Respondent's Local's calculation. Ransom was one of the employees issued a check in the initial distribution.

Prior to February of 2005, it became apparent that a number of employees eligible to receive checks under the initial distribution could not be located. In February of 2005, Respondent Local requested the Employer pursuant to the settlement agreement, to remit payment directly to Respondent Local in the amount of the unclaimed checks. The Employer preferred not to issue the money directly to Respondent Local and was willing to pay a greater total amount if the Respondent Local were willing to waive its right to receive payment directly and instead designate employees for direct payment. The Greater Seattle Area Local, which was covered by the same settlement agreement, insisted on its right to payment directly to it, and the Employer paid that local directly. Respondent National, by Barron, negotiated with the Employer regarding the unclaimed amount. These negotiations resulted in an agreement in February of 2006. Under that 2006 settlement, unit employees, identified by Barron, would receive a lump-sum payment.

Respondent Local determined the amount would be divided equally among employees who were members of Respondent Local during the last payroll period of December 2003, and still employed at the time of the 2006 Settlement. The method of distribution conditioned the ability of employees to share in the distribution upon their union membership. Respondent Local, by Douglas Blakely, president of Respondent Local, chose this method of distribution based on the understanding the Employer owed the money directly to Respondent Local under the 2003 settlement and Respondent Local was free to do with the money as it wished. Respondent Local, by Blakely, intended to reimburse members for the cost of pursuing these grievances:

the second distribution was intended as a refund of dues. Respondent Local, by Blakely chose December 2004 as the determination date because it was the mid point of the initial distribution and as a result, accurate records of membership were readily available for this period.

Barron and Blakely discussed this method of distribution in February or March of 2006. Barron told Blakely it was Respondent Local's decision which employees would receive money, because the money was due to Respondent Local under the 2003 settlement and therefore Respondent Local could do as it pleased.

In March 2006, Blakely provided a list of employees to Barron, consistent with the criteria described above. Barron performed the calculation to determine the amount owing each member and provided the results to the Employer. Several days later, due to a calculation error, Barron again submitted the list with his handwritten corrections to the amount due. In November of 2006, the Employer made payments directly to the employees consistent with the information provided.

Ransom is not a member of Respondents. Other unit employees are not members of Respondent. Ransom was employed during the last payroll period of December 2003 and still employed at the time of the 2006 settlement. Ransom did not receive any payment in the second distribution. Similarly other unit employee nonmembers of Respondents did not receive payment in the second distribution. The unit nonmember employees, employed during the last payroll period of December 2003 and still employed at the time of the 2006 Settlement, did not receive any payment because of their nonmembership.

B. Analysis and Conclusions

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the Section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative to fairly represent all employees in the bargaining unit and to refrain from any action against any employee based upon considerations or classifications which are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Miranda Fuel Co.*, 140 NLRB 181 (1962).

In *Postal Workers Union Local 735 (Postal Service)*, 342 NLRB 545 (2004), the Board found a violation where the union excluded nonmembers from the distribution of the proceeds from a class action grievance. Citing *National Association of Letter Carriers Local 3825 (Postal Service)*, 333 NLRB 343, 353 (2001), the Board held to exclude an employee from a grievance settlement simply because she is not a member of the union is clearly a violation of Section 8(b)(1)(A). In *Postal Workers (Red Bank Local)* 344 NLRB No. 89 (2005) (not reported in Board volumes), the Board found in a default judgment that the respondent-union violated the Act by failing and refusing to include nonmembers in the distribution of the settlement of a class action grievance.

In the instant case, Respondents did not include nonmembers in the distribution based on their nonmembership in Respondents. Thus, I find the dues rebate or monetary payment was reasonably calculated to, and did, interfere with the employees in their freedom of choice in accepting or rejecting the union-security clause. Thus, I find the dues rebate and the granting of monetary payments violated Section 8(b)(1)(A) of the Act.

Respondents argue that they had a right to assign their contract rights to specific individuals, i.e., union members. I find that the statutory duty to represent all employees, not just union members, outweighs the right to assign their contract rights.

I find that Respondent National is liable for the unfair labor practices of Respondent Local. Joint and several liability between an international and local union is appropriate and necessary where: (1) the international delegated its own responsibilities to the local, which then violated the Act, *Montgomery Elevator Co.*, 278 NLRB 871 (1986); (2) the international instigated, participated in or subsequently ratified or condoned the local's conduct, *Meat Cutters Local 222 (Iowa Beef Processors)*, 233 NLRB 839, 849–851 (1977); (3) the action by the local was pursuant to some mandate from or constitutional requirement of the international, *Auto Workers Local 449 (National Metalcrafters)*, 283 NLRB 182 (1987); or (4) successorship principles, *Metallic Lathers Local 46 (Cement League)*, 259 NLRB 70, 71 (1981), where applicable.

In the instant case, Respondent National, by Barron, negotiated with the Employer regarding the unclaimed amount. These negotiations resulted in an agreement in February 2006. Under that 2006 settlement, unit employees, identified by Barron, would receive a lump-sum payment. Respondent National delegated its authority regarding the settlement to Respondent Local which violated the Act. Further, Respondent National failed to object to Respondent Local's distribution to members only and thereby ratified or condoned the conduct of Respondent Local. Accordingly, I find that Respondent National also violated the Act.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the United States Postal Service (the Employer) and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209.

2. Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL–CIO (Respondent Local), and American Postal Workers Union, AFL–CIO (Respondent National) are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondents violated Section 8(b)(1)(A) of the Act by failing and refusing to include nonmembers of Respondents among unit employees who shared in the distribution of a 2006 lump-sum payment made by the Employer to employees identified by Respondents, in settlement of a class action grievance.

4. The Respondents' acts and conduct above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents engaged in unfair labor practices, I recommend that Respondents be ordered to cease and

desist therefrom and, take certain affirmative action designed to effectuate the policies of the Act. Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended¹

ORDER

The Respondents, Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL–CIO, and American Postal Workers Union, AFL–CIO, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to include nonmembers of Respondents among unit employees who share in the distribution of a 2006 lump-sum payment made by the Employer to employees identified by Respondents, in settlement of a class action grievance.

(b) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Li Eagle Ransom, and other injured nonmembers, whole for any loss of earnings and other benefits suffered as a result of the Respondents' failure and refusal to include nonmembers among unit employees who share in the distribution of a lump-sum payment made by the Employer to employees by Respondents in settlement of a class action grievance with interest.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records in the possession of the Respondents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at their hiring hall, meeting rooms, and offices, copies of the attached notice marked Appendix.² Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, sign and return to the Regional Director for Region 19 sufficient copies of

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the notice for posting by the United Postal Service, if willing, at all places where notices to employees are customarily posted. Further, Respondents shall duplicate and mail, at their own expense, a copy of the notice to employees and members, to all former bargaining unit employees employed by the Employer at any time since November 2006, and to all current bargaining unit employees employed at any work site at which the Em-

ployer is unable for any reason to post the notice to employees and members.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.